

FILED  
CLERKS OFFICE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
2004 MAY 26 P 2:12

BABCOCK BORSIG POWER GmbH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CIVIL ACTION
BABCOCK POWER, INC.,	)	NO. 04-10825 (RWZ)
	)	
Defendant.	)	
	)	

**AFFIDAVIT OF STEVEN J. COMEN IN SUPPORT OF BABCOCK POWER, INC.'S  
MOTION TO DISMISS THE COMPLAINT**

I, Steven J. Comen, state under oath as follows:

1. I am a partner of the law firm Goodwin, Procter LLP ("Goodwin"). Goodwin is a limited liability partnership with a principal place of business at Exchange Place, Boston, Massachusetts.

2. I represent Babcock Power, Inc. ("Babcock Power") in the instant litigation as well as in a similar proceeding brought by Babcock Power, captioned Babcock Power, Inc. v. Babcock Borsig Power GmbH, et. al., No. 03-5334-BLS (Mass. Super. Ct.) ("Initial Action").

3. I make the following statement upon my personal knowledge and belief, except as otherwise noted.

4. This affidavit is submitted in support of Babcock Power Inc.'s Motion to Dismiss the Complaint in the above captioned action.

5. On November 10, 2003, I caused to be filed in the Superior Court Department of the Trial Court, for Suffolk County, Massachusetts in the Initial Action a complaint against Babcock Borsig Power GmbH, Babcock Borsig AG, Dr. Helmut Schmitz, in his capacity as

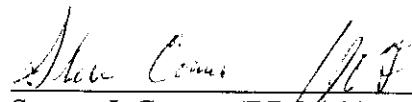
Custodian of Babcock Borsig Power GmbH and Babcock Borsig AG, Balcke-Dürr GmbH, SPX Corporation, and John Does 1-5. A copy of this complaint is attached hereto as Exhibit A.

6. Upon information and belief, on November 14, 2003, James Fleckner of my office caused a copy of the complaint in the Initial Action to be sent to attorneys for Babcock Power GmbH. A copy of Mr. Fleckner's cover letter attaching the complaint is attached hereto as Exhibit B.

7. I have since caused defendants Balcke-Dürr GmbH and SPX Corporation to be voluntarily dismissed from the Initial Action.

8. Prior to the filing of the Initial Action, as early as May 14, 2003, I caused to be filed with the Superior Court Department of the Trial Court, for Suffolk County, Massachusetts a separate action, also against Babcock Borsig Power GmbH, Babcock Borsig AG, Dr. Helmut Schmitz, in his capacity as Custodian of Babcock Borsig Power GmbH and Babcock Borsig AG, Balcke-Dürr GmbH, SPX corporation, and John Does 1-5. Although this complaint was never served, and has since been withdrawn, I had caused a copy of this complaint to be provided to attorneys for Babcock Power GmbH. A copy of my cover letter attaching the complaint is attached hereto as Exhibit C.

Signed under pains and penalties of perjury this 26<sup>th</sup> day of May, 2003.

  
Steven J. Comen (BBO# 093320)  
GOODWIN PROCTER LLP  
Exchange Place  
Boston, Massachusetts 02109  
617-570-1000